SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 190.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ONE DISTILLERY ET ALIA, AND HENRY WOLTERS, WILLIAM HELM, R. H. AUSTIN, AND J. H. COFFMAN, CLAIMANTS OF SAID ONE DISTILLERY ET ALIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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1 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the judges of the circuit court of the United States, of the ninth judicial circuit in and for the southern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you between the United States of America, plaintiffs in error, and One Distillery et alia, and Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants of said One Distillery et alia, defendants in error, a manifest error hath happened, to the great damage of the said United States of America, plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the eleventh day of September next, in the said Supreme Court. to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 12th day of August, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-second.

[SEAL.] WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Southern District of California.

The above writ of error is hereby allowed.

OLIN WELLBORN,
United States District Judge for the Southern District of California, and one of the Judges of the United States Circuit Court for the Southern District of California.

1½ (Indorsed:) United States Supreme Court. United States of America, plaintiffs in error, vs. One Distillery et al., Henry Wolters et al., claimants, defendants in error. Writ of error. I do hereby certify that a copy of the within writ of error was this 12th day of August, 1897, lodged in the clerk's office of the said United States circuit court for the southern district of California, for the said defendants in error. Wm. M. Van Dyke, clerk of U. S. circuit court, southern district of California. Filed Aug. 12, 1897. Wm. M. Van Dyke, clerk.

2 UNITED STATES OF AMERICA, ss.

To one distillery et alia, and Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants of said one distillery et alia, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the eleventh day of September, A. D. 1897, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of the ninth judicial circuit, in and for the southern district of California, wherein the United States of America are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Olin Wellborn, United States district judge for the southern district of California and one of the judges of the United States circuit court for the southern district of California. This 12th day of August, A. D. 1897, and of the Independence of the United States the one hundred and twenty-second.

OLIN WELLBORN,
United States District Judge for the Southern District of California, and one of the Judges of the United States Circuit Court for the Southern District of California.

2½ Received a copy of the within citation this 23rd day of August, 1897.

BROUSSEAU & HATCH,
Attorneys for Defendants in Error.

(Indorsed:) M'sh's Nor. Dist. Cali., No. 295. In the Supreme Court of the United States. United States of America, plaintiffs in error, vs. One Distillery et al., Henry Wolters et al., claimants, defendants in error. Citation. Filed Aug. 27, 1897. Wm. M. Van Dyke, clerk.

3 *The answer of the judges of the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California.*

The record and all proceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said circuit court within mentioned to the Supreme Court of the United States in a certain schedule to this writ annexed as within we are commanded.

By the court:

[SEAL.] WM. M. VAN DYKE, *Clerk.*

4 Circuit court of the United States. Ninth judicial circuit. In and for the southern district of California. January term, 1891.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
ONE DISTILLERY ET AL. } No.

WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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5 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the judge of the district court of the United States for the southern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States of America, plaintiffs in error, and One Distillery et al., and Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants, defendants in error, a manifest error hath happened, to the great damage of the said United States of America, plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, ninth judicial circuit, in and for the southern district of California, together with this writ, so that you have the same at Los Angeles, in

the said southern district of California, on the second Monday of January next, in the said circuit court, to be there and then held, that the record and proceedings aforesaid be inspected, the said circuit court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the
6 Supreme Court of the United States, this 31st day of October, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] WM. M. VAN DYKE,
Clerk of the U. S. Circuit Court, Southern District of California.

The above writ of error is hereby allowed.

ROSS, *District Judge.*

(Endorsed:) United States district court in and for the southern district of California. United States of America vs. One Distillery et al., Henry Wolters et al., claimants. Writ of error. I do hereby certify that a copy of the within writ of error was this 31st day of October, 1890, lodged in the clerk's office for the above-named defendants in error. E. H. Owen, clerk of the U. S. district court. Filed Oct. 31st, 1890. E. H. Owen, clerk.

7 UNITED STATES OF AMERICA, ss.

To One Distillery et al., and Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants, greeting:

You are hereby cited and admonished to be and appear at the circuit court of the United States, ninth circuit, southern district of California, to be held at the city of Los Angeles, in the State of California, on the 12th day of January, A. D. 1891, pursuant to a writ of error filed in the clerk's office of the district court of the United States in and for the southern district of California, wherein the United States of America are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Erskine M. Ross, judge of the district court of the United States in and for the southern district of California, this 31st day of October, A. D. 1890, and of the Independence of the United States the one hundred and fifteenth.

ROSS, *District Judge.*

Service of a copy of the within citation is hereby acknowledged.

BROUSSEAU & HATCH,
Attorneys for defendants in error.

(Endorsed:) In the circuit court of the United States in and for the southern district of California. United States of America vs. One Distillery et al., Henry Wolters, et al., claimants. Citation.

8 In the circuit court of the United States, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA
vs.
ONE DISTILLERY ET AL., HENRY WOLTERS et al., claimants.

UNITED STATES OF AMERICA,
Southern District of California, ss:

Frank P. Flint, being duly sworn, deposes and says that heretofore, to wit, on the 1st day of November, A. D. 1890, he served the within citation by showing the original, and delivering a copy thereof personally to Brousseau and Hatch, attorneys of record for defendants in error, at their place of business, to wit, the office of said Brousseau and Hatch, Baker Block, city of Los Angeles, county of Los Angeles, State of California.

FRANK P. FLINT.

Subscribed and sworn to before me this 25th day of November, A. D. 1890.

WM. M. VAN DYKE,
U. S. Commissioner.

(Endorsed:) No. 82. The United States vs. One Distillery, etc. U. S. district court, southern district of California. Citation and return thereon. Filed November 25th, 1890. E. H. Owen, Clerk.

9 *The answer of Erskine M. Ross, judge of the district court for the southern district of California to the foregoing writ:*

The record and process, whereof mention is therein made, follow in these words, to wit:

10 United States of America. District court of the United States for the southern district of California.

To the Honorable E. M. Ross, judge of the district court of the United States in and for the southern district of California:

The libel of information of George J. Denis, attorney of the United States for the said district of California, who prosecutes for the United States in this behalf and in the name and behalf of the United States, against the distillery, winery, buildings, premises, consisting of five acres of land, situate in the county of Fresno, near the city of Fresno, and occupied by the Fruitvale Wine & Fruit Company, of which Wolters & Helm are now the proprietors, and also of one still, one elevator, one grape stemmer, one lot of belting, one cauldron, one suction pump, one wine press, one wine tank, two trucks, one windmill and pump, nine wine tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three

hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and treadwheel; also of thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons of white wine, two thousand gallons of port wine, one thousand gallons of brandy,
11 four hundred and fifty gallons of alcohol, ten thousand gallons of wash for brandy, and against all persons claiming or intervening for their interest, and for cause of seizure alleges as follows:

I.

That, to wit, between the first day of July, 1887, and the first day of February, 1888, the said Fruitvale Wine & Fruit Company's distillery, near Fresno City, in Fresno County, California, aforesaid, did defraud and attempt to defraud the United States of the tax due by said company on certain spirits distilled by it, the product of its said distillery, failing and refusing to pay to the said United States the said tax due by said distillery on the spirits aforesaid, to wit, on the brandy distilled by the said Fruitvale Wine & Fruit Company between the dates aforesaid.

II.

That said company between the dates last named was a corporation duly organized and acting under the laws of the State of California, and as such was engaged in carrying on the business of distilling, and by reason of such evading and defrauding the distilled spirits and raw materials for the production of distilled spirits now in said distil'ery and on said distillery premises are forfeitable to the United States.

III.

That all matters and things alleged as aforesaid are within the jurisdiction of the United States and of this honorable court.

IV.

Lastly, the said attorney of the United States, on behalf of the United States, saith that all and singular the premises are true.
12 Wherefore he prays that process in due form of law may issue against said distillery, winery, buildings, premises, consisting of five acres of land, situated in the county of Fresno, near the city of Fresno, and occupied by the Fruitvale Wine & Fruit Company, of which Wolters & Helm are now the proprietors, and also of one still, one elevator, one grape stemmer, one lot of belting, one cauldron, one suction pump, one wine press, one wine tank, two trucks, one windmill and pump, nine wine tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and treadwheel; also of thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons

of white wine, two thousand gallons of port wine, one thousand gallons of brandy, four hundred and fifty gallons of alcohol, ten thousand gallons of wash for brandy; and the goods and merchandise and property hereinbefore mentioned and described, to enforce the forfeiture thereof, and requiring notice to be given to all persons concerned in interest to appear and show cause on the return day of said process, why such forfeiture should not be decreed according to the form of the statute in such cases made and provided.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) No. 82. District court of the United States, southern district of California. The United States, plaintiff, vs. One Distillery et. al., defendants. Libel of information. Filed Nov. 13th, 1888. E. H. Owen, clerk. George J. Denis, United States Attorney.

13 SOUTHERN DISTRICT OF CALIFORNIA, ss.

The President of the United States of America to the marshal of the United States for the southern district of California, greeting:

Whereas a libel of information hath been filed in the dis-
[SEAL.] trict court of the United States for the southern district of California on the 13th day of November, in the year of our Lord one thousand eight hundred and eighty-eight, against the distillery, winery, buildings, premises, consisting of five acres of land situate in the county of Fresno, near the city of Fresno, and occupied by the Fruitvale Wine and Fruit Company, of which Wolters & Helm are now the proprietors, and also of one still, one elevator, one grape stemmer, one lot of belting, one cauldron, one suction pump, one wine press, one wine tank, two trucks, one windmill and pump, nine wine tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and treadwheel; also of thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons of white wine, two thousand gallons of port wine, one thousand gallons of brandy, four hundred and fifty gallons of alcohol, ten thousand gallons of wash for brandy, and
14 against all persons claiming or intervening for their interest, for the reasons and causes in the said libel of information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said above-named articles or any of them may be cited, in general and special, to answer the premises, and all proceedings being had that the said above-named articles and each and every of them may, for the causes in the said libel of information mentioned, be condemned and sold to pay the demands of the United States of America:

You are therefore hereby commanded to attach the said above-named articles and each and every of them and to detain the same in your custody until the further order of the court respecting the same, and to give

due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel of information, that they be and appear before the said court, to be held in and for the southern district of California on Friday, the 30th day of November, 1888, at 10 o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. Erskine M. Ross, judge of said court, at the city of Los Angeles, in the southern district of California, this 13th day of November, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the one hundred and thirteenth.

E. H. OWEN, *Clerk.*
GEORGE J. DENIS, ESQ.,
U. S. Attorney.

15 In obedience to the within monition, I attached the distillery, etc., etc., therein described on the 16th day of November, 1888, and have given due notice to all persons claiming the same that this court will on the 30th day of November (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

D. R. RISLEY,
U. S. Marshal,
By THOMAS B. HAYES,
Deputy Marshal.

Dated NOVEMBER 20TH, 1888.

(Endorsed:) No. 82. District court of the United States, southern district of California. The United States vs. One Distillery et al. Monition ret'ble Nov. 30th, 1888. George J. Denis, esq., U. S. attorney. Issued Nov. 13th, 1888. Filed Dec. 13, 1888. E. H. Owen, clerk.

16 In the district court of the United States, southern district of California.

UNITED STATES
vs.
ONE DISTILLERY ET AL. } No. 82. Demurrer.

Now comes the defendants, H. Wolters, Helm, and R. H. Austin, and demur to the libel of information in above-entitled case on the following grounds:

1.

That the court has no jurisdiction of the persons of the defendants above set forth, or the subject of the action.

2.

That the plaintiff in said cause has no legal capacity to sue.

3.

That there is a defect or misjoinder of parties defendant.

4.

That several causes of action have been improperly united.

5.

That the complaint or libel does not state facts sufficient to constitute a cause of action.

6.

That the complaint or libel of information is ambiguous, unintelligible, and uncertain.

17 As a special cause of objection to said libel of information, it does not appear within said libel of information that the Commissioner of Internal Revenue authorized said proceedings.

The authorization or sanction of said proceedings by the officer aforesaid must appear at least by averment in the libel of information.

As the matter now stands, the United States district attorney is proceeding upon his own volition, when the law requires absolute authorization, and such authorization to appear in the pleading.

The proceeding is defective in seeking to condemn five acres of land.

The pleading is further defective in alleging that the buildings and premises and machinery as set forth are occupied by the Fruitvale Wine and Fruit Company, of which "Wolters and Helm are now the proprietors." It is impossible for Wolters and Helm to be the proprietors of a company.

The pleading is further defective in omitting to state the amount of the tax due by said distillery on the spirits mentioned in said pleading.

The said pleading is further defective in omitting to aver in what manner or mode the defendants, H. Wolters, Helm, and R. H. Austin, are responsible in forfeiture or otherwise of the property alleged in said pleading to be the property of said Wolters and Helm, said Austin being omitted as one of the proprietors.

Although the present proceedings is in rem, there must be an aggressive party whose prop'rty is sought to be confiscated. The United States is the aggressive party, but there is no mention as to who at the present time are the owners of the property.

18 Again, while there is no allegation of the distinct ownership or responsibility of the Fruitvale Wine and Fruit Company, or Wolters, or Helm, there is a claim of forfeiture of property not allowed by law. (Sec. 3257, United States Revised Statutes.)

Forfeiture contemplates ownership. We say there is no averment of ownership of the property sought to be condemned on the part of the Fruitvale Wine and Fruit Company. There is a simple statement that

it was occupied by them, and that Wolters and Helm are now the proprietors. If the Fruitvale Wine and Fruit Company did defraud or attempt to defraud the United States of the tax due by said company on the brandy distilled by the said Fruitvale Wine and Fruit Company between the first day of July, 1887, and the first day of February, 1888, and if, as stated in said pleadings, Wolters and Helm are now the proprietors of the property sought to be forfeited, why should their property be forfeited to satisfy a claim of forfeiture on the part of the United States against the Fruitvale Wine and Fruit Company?

The defendants raised the point that under sec. 68, page 248, # 13, United States Statutes at Large, the seizure made by the United States of the property belonging to defendants, and proceedings to enforce the asserted forfeiture, were not commenced within the provisions of the above-cited law.

For the above reasons the defendants ask that their demurrer be sustained and that the libel of information be dismissed.

J. MARION BROOKS,
Atty. for Defendants Wolters, Helm, and Austin.

19 (Endorsed:) Service by copy of within made this 10 day of December, 1888. George J. Denis, United States attorney. United States district court, southern district of California. United States, plaintiff, vs. One Distillery et al., defendants. Demurrer & motion to dismiss. Filed December 10th, 1888. E. H. Owen, clerk; Wm. M. Van Dyke, deputy. J. Marion Brooks, atty. for defendants.

20 At a stated term, to wit, the January term, A. D. 1889, of the district court of the United States of America in and for the southern district of California, held at the city of Los Angeles on Thursday, the 3rd day of January, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Hon. E. M. Ross, district judge.

THE UNITED STATES
vs.
ONE DISTILLERY ET AL. } No. 82.

Parties appearing by respective counsel, the demurrer in the above-entitled cause is confessed by the U. S. atty., and ten days allowed in which to amend the libel of information.

21 In the United States district court for the southern district of California.

To the Hon. ERSKINE M. ROSS,
District Judge for the Southern District of California:

Be it remembered that on this the ninth day of January, in the year of our Lord one thousand eight hundred and eighty-nine, before the Honorable Erskine M. Ross, judge, as aforesaid, comes, in his own proper person, with this an amended libel of information, as permitted by the court, George J. Denis, esquire, attorney for the United States of America for

the aforesaid southern district of California, and in the name and behalf as well of the United States as of Asa Ellis, esquire, collector of the internal revenue for the first district of California, and of all other persons concerned, propounds and gives the said judge to understand and be informed that on the first day of November, in the year of our Lord one thousand eight hundred and eighty-eight, near the city of Fresno, in the county of Fresno, in the district aforesaid, the said Asa Ellis, esquire, collector as aforesaid, did seize the following real and personal property, to wit, five acres of land, situate about four miles from the city of Fresno, upon which stand the distillery and winery buildings and distillery and winery premises, heretofore occupied by the Fruitvale Wine and Fruit Company, together with all and singular the buildings standing upon said winery premises and distillery premises heretofore and above referred to; also of one still, one elevator, one grape stemmer, one lot of belting, one cauldron, one suction pump, one wine press, one wine tank, two trucks, one windmill and pump, nine wine
22 tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone, and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and tread wheel; also of thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons of white wine, two thousand gallons of port wine, one thousand gallons of brandy, four hundred and fifty gallons of alcohol, ten thousand gallons of wa*hs* for brandy; and all the tools, implements, and utensils used in the manufacture of distilled spirits, and now hath the same in custody and possession, as being forfeited to the United States for the causes hereinafter mentioned, that is to say:

For that heretofore, prior to said seizure, to wit: On the first of November, 1888, and for a long time prior thereto, taxes were, and continuously until and inclusive of the first day of November, 1888, were, and still are, imposed by the provisions of the internal-revenue laws of the United States on distilled spirits; that the said barrels containing proof brandy and high proof spirits, being goods, wares, and merchandise, articles and objects upon which taxes were and are imposed by provis'ons of law, were found by the said collector as aforesaid, on or about the first day of June, A. D. 1887, in the possession and custody and within the control of the Fruitvale Wine and Fruit Company, a corporation, for the purpose of being sold and removed by the said Fruitvale Wine and Fruit Company in fraud of the revenue laws, and with the design to avoid payment of said taxes due to the United States on
23 said brandy (the said brandy being distilled spriirits within the intent and meaning of the law) and spirits; that thereafter certain persons, theretofore stockholders in the Fruitvale Wine and Fruit Company, namely, Wolters, Helm, Austin, and Kauffman, purchased the property of the said Fruitvale Wine and Fruit Company hereinbefore described; that the said Wolters, Helm, Austin, and Kauffman purchased the property then and there, well knowing that the said Fruitvale Wine and Fruit Company, through its agents, employees, and officers, had so

sought, as aforesaid, to defraud the United States of the internal-revenue tax due by it to the Government, contrary to the form of the Revised Statutes of the United States in such case made and provided. Whereby, and by force of the said statutes, the said brandy, spirits, and all the property, tools, implements, and utensils hereinbefore mentioned and described, so found within the custody and within the control of the said Wolters, the said Helm, the said Austin, and the said Kauffman, became and are forfeited to the United States.

And for that, also, the said Fruitvale Wine and Fruit Company aforesaid, a corporation duly organized and incorporated under the laws of the State of California, being as aforesaid then and there a distiller of distilled spirits, and engaged in carrying on said business at and by means of said distillery, situate near the city of Fresno, aforesaid, in the county of Fresno, Southern District of California, did then and there defraud the the United States, during the months of July, August, September, October, November, and December, 1887, of the tax on a large quantity of spirits distilled by said company, by the fraudulent removal of said spirits from the distillery where the same had been distilled to a place
24 other than a distillery, bonded, or designated warehouse or place of depository, without the tax on said distilled spirits or any part thereof being paid, and without the packages in which said spirits were contained being stamped and branded, and without the law relative to distilled spirits being complied with in any manner whatever, with the intent to defraud the United States of the tax due on said spirits then and there distilled by it, the said Wolters, Helm, Austin, and Kauffman being then and there interested in and stockholders of the corporation aforesaid, and having knowledge as such stockholders and owners of the frauds aforesaid being practised as aforesaid upon the Government of the United States of America, and contrary to the form of the statutes of the United States in such case made and provided. Whereby and by reason whereof the said distillery and lot of land and all the property hereinbefore mentioned and described became and are forfeited to the United States in form and manner as by statute provided.

And for that also heretofore, on the the first day of July, A. D. 1887, and for a long time prior thereto and continuously thereafter until and inclusive of the 31st day of December, 1887, the said Fruitvale Wine and Fruit Company, a corporation as aforesaid, being a distiller of distilled spirits, and engaged then and there in carrying on the business of a distiller, of which corporation the said Wolters and the said Helm, the said Austin and the said Kauffman, were stockholders and owners therein, was by law required to keep a certain book in a form and manner prescribed by law, wherein it was required to enter from day to day, among other things, the number of hours said distillery was operated each day, and the number of wine gallons and proof gallons of distilled spirits, to wit: Of brandy produced each of said days, and one W. More
25 Young, the duly appointed and acting secretary of said corporation, and acting for said corporation, the owner as aforesaid of said distillery, then and there being required by law as aforesaid to keep said book in the form and manner aforesaid did, during the last-mentioned time, to wit: During the months of July, August, September, October, November, and December, 1887, then and there, with

intent to defraud the United States of the tax on the distilled spirits then and there made by him at and by means of said distillery, and with intent then and there to mislead and deceive the internal-revenue officers of the United States relative to the amount of spirits distilled at said distillery, did then and there willfully, knowingly, and fraudulently make certain false and fraudulent entries in said book relative to the quantity of spirits then and there produced by said corporation at its said distillery, and did then and there omit to make certain entries in said book of the quantity of materials purchased for the production of spirits, from whom and when purchased, and by what conveyance delivered at said distillery, the amount paid therefor, and did then and there neglect and omit to do all other acts and things required of the said corporation relative thereto, with intent to mislead the officers of internal revenue in respect to said facts, and to defraud the United States of the tax due on the spirits distilled by said corporation at its said distillery, and the said attorney of the United States alleges that by means of said false entries and said omissions to make said entries the said Fruitvale Wine and Fruit Company, a corporation as aforesaid, of which the said Wolters, Helm, Austin, and Kauffman were part owners and stockolders, did, during the months hereinbefore stated, defraud the United States of the tax due on the spirits distilled by the said corporation.

26 Whereby and by reason whereof the said distillery and distillery premises, and all the property, real and personal thereunto belonging or in anywise appertaining, became and is forfeited to the United States in form and manner by the statutes provided.

And for that, also, the said Fruitvale Wine and Fruit Company, a corporation as aforesaid, of which the said Wolters, the said Helm, the said Austin, and the said Kauffman were stockholders and part owners in the property of said corporation, which was then and there a distiller of spirits and engaged in carrying on said business at and by means of said distillery, situate near Fresno City aforesaid, in the county of Fresno, southern district of California, did then and there, at divers days and times during the months of July, August, September, October, November, and December, A. D. 1887, knowingly and willfully omit, neglect and refuse to do and cause to be done any and every of the things required by law in the carrying on and conducting of the said business, contrary to the form of the statutes of the United States in such case made and provided, whereby and by reason whereof the said brandy, spirits, wine, and all other property belonging to said corporation, and used by it in the distilling of spirits aforesaid, became and are forfeited to the United States in form and manner by the statutes provided.

And for that, also, the said Fruitvale Wine and Fruit Company, a corporation as aforesaid, of which the said Wolters, Helm, Austin, and Kauffman were stockholders, being as aforesaid then and there a distiller of spirits and engaged in carrying on said business at and by means of said distillery, did then and there commit acts prohibited by the provisions of law in the carrying on and conduct of said business of distiller, contrary to the form of the statutes of the United States

27 in such case made and provided, whereby and by reason whereof the property, real and personal, hereinbefore described became and is forfeited to the United States in form and manner by the statutes provided.

Lastly, the said attorney of the United States, on behalf of said United States, saith that all and singular the premises are true.

Wherefore he prays that process in due form of law may issue against the said lot of land, together with the buildings situated thereon, and all the personal property hereinbefore mentioned and described, to enforce the forfeiture thereof, and requiring notice to be given to all persons concerned in interest to appear and show cause on the return day of the said process why such forfeiture should not be decreed.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) Received copy of the within libel of information this 11th Jan'y, 1889. Howard & Brooks, attorneys for claimants. 82. In the U. S. dist. court, southern dist. of Cal. United States against One Distillery et al. Amended libel of information. Filed Jan'y 11th, 1889. E. H. Owen, clerk. George J. Denis, U. S. attorney.

28 In the district court of the United States in and for the southern district of California.

THE UNITED STATES, PLAINTIFF,
vs.
ONE DISTILLERY ET AL., DEFENDANTS. } Answer.

To the Honorable E. M. Ross,
Judge of the District Court of the United States in and for the Southern District of California:

And now, Henry Walters, Wm. Helm, Austin, and Coffman, intervening for their interest therein, appear before this honorable court, and for answer to the amended libel and information of the United States attorney against the said distillery and against all persons concerned in interest therein, allege and particularly propound as follows:

I.

That the respondents are now the owners of all of the property, real and personal, described in said information, or so much thereof as actually existed at the time of seizure of the same, on or about the 2d day of November, 1888, as hereinafter described.

II.

That the time, manner, and means on which and by which the several portions of said property were acquired and created by respond-
29 ents are herein specifically set forth as follows, to wit:

The following, to wit: One still with merely a clapboard covering, one lot of belting, one pump, one wine press, one wine tank, two trucks, one pump and windmill, 21 wine tanks, 69 puncheons, five barrels, 54 fermenting tubs (for wine), 1 grindstone, tools, hose, one Howe's scale, a lot of lumber for tanks, 300 gallons sweet wine, with the winery building as all existed on the 9th day of June, 1888, with the five acres of land on which the same is situated, were each and all acquired by

respondents at and by a public sale thereof, by the assignee of the Fruitvale Wine and Fruit Company, had on said premises on the said 9th day of June, 1888, for the sum of $7,700.00 in cash, which sum was, on or about said date, paid by respondents to said assignee, and said property duly transferred to the possession and ownership of said respondents; that all of the wine embraced and included in said purchase and then on hand at said winery consisted of two pipes, all of which was spoiled and unmarketable.

III.

That immediately upon the completion of said sale and transfer of said property and premises those respondents formed a copartnership for the purpose of operating said winery upon said premises, and commenced negotiations for the purchase of a boiler and a large amount of machinery, and arranged for the construction and erection of necessary buildings involving an outlay of the sum of $5,000.00.

IV.

That on or about the 20th day of June, 1888, and while respondents were in possession of said premises and property, and were in good faith making large and expensive additions thereto, said property and premises were seized by and under the authority of the United States Government, acting through one Asa Ellis, then collector of internal revenue at San Francisco, for an alleged violation on the part of the corporation hereinbefore named, in the year 1887, of the revenue laws of the United States, and at the time of said seizure said premises and property were duly appraised at the sum of $7,200.00.

V.

That afterwards, by reasons of certain negotiations had with the revenue officials of the United States, the said premises and property were, on or about the 27th day of October, 1888, released and these respondents restored to the possession thereof, whereupon these respondents proceeded with further improvements and expenditures upon said premises and property, and engaged in the business of operating said winery, adding from their personal funds in the purchase of stock, material, and machinery a further sum of $25,000.00, thus increasing the value of the premises, machinery, material, and stock to the value of $35,000.00 or thereabouts, and in good faith carried on the business for which the same was purchased, and in all respects complied with the laws of the United States and the rules and regulations of the revenue department thereof.

VI.

That afterwards, to wit, on or about the 2d day of November, 1888, on account of the alleged wrongful acts of said corporation—The Fruitvale Wine and Fruit Company—occurring in the year 1887, the said premises and property, with all the additions, improvements, and stock and material made and supplied by these respondents, were again

seized by the revenue officers of the United States, and the occupancy and possession thereof withheld from these respondents and their agents until on or about the 30th day of November, 1888, when these
31 respondents were restored to the possession thereof by giving a bond in the sum of $35,000.00, the same being the amount of the aforesaid value of said property as fixed and determined by said revenue officials at or about said date.

VII.

That afterwards, to wit, on the 8th day of December, 1888, the said premises and property were again seized by and under the direction of said revenue officials of the United States, on acount of the alleged wrongdoing of said corporation during its occupancy thereof, and in order to prevent the sale of said premises and property, and to recover the possession thereof, and to prevent further loss and damage by the suspension of their business then and there being carried on, these respondents were compelled to and did pay under protest to the said collector of internal revenue the sum of $3,392.00 alleged to be due and owing from said corporation to the United States, by reason of the failure of the said corporation to comply with the laws and rules and regulations of the revenue service of the United States during the year 1887, the time of occupation and occupancy of said premises by said corporation.

VIII.

That between the dates of the first seizure and appraisement of said premises and property, which occurred on or about the 20th day of June, 1888, and the second seizure and appraisement thereof, which occurred on or about the 2nd of November, 1888, as hereinbefore set out, these respondents had added to said premises and property by expenditure from their own private funds to the extent of over $25,000.00, the following items, to wit: One building around the still, one boiler to crush and pump by steam, *around the still; one boiler to crush and pump by steam,*
32 a house for laborers to live in, 39 puncheons, 18 wine tanks, 2 fermenting tanks, a carload of barrels, 400 feet of hose, about 70,000 gallons of red wine, 30,000 gallons of white wine, 15,000 gallons of port and sherry wine, 1,000 gallons of brandy, and 450 gallons of alcohol, all of which, together with all of the property purchased and received by respondents from the assignee of said corporation, the said Fruitvale Wine and Fruit Company, as hereinbefore set out, were seized and taken from these respondents on said 2nd day of November, and again on said 8th day of December, as hereinbefore described, without the fault of these respondents, and without the pretense of wrongdoing on their part so far as they are aware or believe.

IX.

These respondents and each of them deny that the 1,000 gallons of brandy, or the 450 gallons of alcohol, or the barrels containing the same or either or any part of either of them, found in the possession of these respondents at the date of the seizure aforesaid in November, 1888, or

at any time, were the same, or formed the whole or any part of any brandy or alcohol or high proof spirits or barrels containing the same or any part thereof, which were found in the possession of the Fruitvale Wine and Fruit Company on or about the 1st on June, 1887, as alleged in said amended information; or that said brandy or alcohol or the barrels containing the same or any part thereof, ever were in the possession of said Fruitvale Wine and Fruit Company on June 1st, 1887, at said distillery, or at any other time or place.

These respondents deny that they or either of them ever at any time purchased or received from said Fruitvale Wine and Fruit Company any brandy or alcohol or other high proof spirits, well knowing,
33 or in any manner knowing, that said company had defrauded or sought to defraud the United States, or had failed to apply or sought to avoid the payment of taxes due thereon, or that the same had for any cause become forfeited to the United States.

X.

These respondents further answering, admit that they were small shareholders in the stock of the corporation known as the Fruitvale Wine and Fruit Company, in order to aid in promoting an industry in the interest of the community where the same was organized, but they all and each deny that they or either of them ever took any part in the conduct or management of said company's affairs, or ever occupied any position or had any voice in its control, and they and each of them especially deny and repudiate the charge in said amended information that they or either of them had knowledge of the frauds of the officers and agents of said corporation; they deny that they as stockholders or otherwise, had any knowledge whatsoever of any fraudulent removal of spirits from said premises, or of any failure to keep proper books of entry, or the making of fraudulent entries, or the omission to make certain entries required by law on the part of said corporation or of its secretary, W. More Young, or any of its agents, officers or employes whatsoever; on the contrary these respondents aver that in no way or manner either as stockholders or otherwise, did they ever at any time have knowledge prior to the seizure of their property as aforesaid of the alleged fraudulent acts of said corporation or the acts complained of, of any of its officers, agents or employes; that they *they* have not sufficient information in regard to the several wrongful acts alleged to have been perpetrated by said corporation on which to found a belief; they there-
fore, on behalf of said corporation, deny all and singular
34 the alleged fraudulent acts charged in said information as having been done and performed by said corporation, and aver that if said corporation has in any way or manner failed to perform its obligations to the United States, that it, said corporation, has made and executed and delivered to the United States a good and sufficient bond conditioned for the faithful compliance on its part of all its duties and obligations to the United States while engaged in the business carried on by said corporation on the premises aforesaid, and that said bond is still in full force and effect, and said respondents further aver that all and singular the amounts due by penalty or otherwise from said corporation to said United States have been fully satisfied, paid, and discharged.

XI.

That all and singular the premises are true.

Wherefore, respondents pray:

1st. That all and singular the goods, wares, and merchandise, land and premises seized as hereinbefore set forth be fully restored to them and decreed to be relieved from all claims on the part of the United States.

2nd. That the bond executed and delivered by these respondents for the sum of $35,000.00, as hereinbefore set out, be cancelled and delivered up to them.

3d. That the said sum of $3,392.00 paid by them to the United States as hereinbefore described be restored to them.

4th. For such other general relief as may be mete and proper in the premises.

BROUSSEAU & HATCH,
Attorneys for Respondents.

Copy of above received this 17" day of April, A. D. 1889,
35 verification waived.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) No. 82. In the district court of the United States for the southern district of California. United States vs. One Distillery et al. Answer. Filed Apl. 19th, 1889. E. H. Owen, clerk.

36 In the United States district court, southern district of California.

THE UNITED STATES
vs.
ONE DISTILLERY ET AL. } Amendment to answer.

By leave of the court first had and obtained, the claimants in the above-entitled action amend and supplement their answers on file herein in manner following:

The said claimants aver that on or about the 20th day of December, 1888, an indictment was presented and filed in this court wherein and whereby one W. More Young was charged by the grand jury of the United States, then convened in said court, with having committed certain unlawful acts against the internal-revenue laws of the United States while the said Young was secretary of the Fruitvale Wine and Fruit Company, a corporation, a certified copy of said indictment being hereto annexed, marked Exhibit "A," and made a part hereof.

That thereafter the said W. More Young was duly arraigned in this court and entered a plea of not guilty; that thereupon the said Young was tried for the offenses charged in said indictment before the court and a jury duly impaneled and sworn to try said Young, and a verdict was rendered by said jury in open court and duly recorded, whereby the said Young was found guilty by said jury upon one of the counts of said indictment, to wit, upon the "first count," and not guilty upon the other

four charges or counts of said indictment, a certified copy of said
37 verdict being hereto annexed, marked Exhibit "B," and made a part hereof; that thereupon on, to wit, the 21st day of February, 1889, judgment was pronounced in said court against said Young, and he was sentenced to one year's imprisonment in the county jail of Fresno County, in execution thereof.

And claimants further aver that at all the times mentioned in said indictment the said W. Moore Young was a stockholder owning shares of the capital stock of said corporation, and that said corporation, at the dates and times mentioned therein, was the owner of all of the real and personal property upon which and in connection with which the said distillery was situated and operated.

That it was by virtue of his position as secretary of said corporation that said Young was enabled to execute and sign the document mentioned in the first count of said indictment, and likewise to execute and sign the documents mentioned in the other four counts thereof; and it was only as an officer of said corporation that said Young could have executed and signed any or either of them.

And these claimants further aver that the whole of the capital and property of said corporation consisted of said distillery and distillery premises, and winery with its appurtenances, and that the capital stock in said corporation owned by said More Young at said times represented the interest and property which he then had and owned in said distillery, distillery premises, and winery.

And these claimants also aver that the distillery and distillery premises, winery, and real and personal property mentioned in the libel of information herein, is the same distillery and distillery premises, winery, and real and personal property mentioned and referred to in said
38 indictment against said Young. And the alleged fraud, concealments, and removal of distilled spirits, and the other alleged fraudulent acts contained in said libel of information, are the same frauds, concealments, and removals of distilled spirits and other alleged fraudulent acts inquired of and investigated upon the trial of said W. More Young hereinabove mentioned, and in respect of which he was convicted and acquitted in manner aforesaid.

And these claimants further aver that all of the evidence which would be necessary to establish, and competent under the various assignments and charges of fraud set out in plaintiff"s libel of information herein, was used and introduced upon the trial of said Young; and that the various charges of fraud and causes of forfeiture alleged by plaintiffs herein relate to the same subject matter and are based on the same transactions as the various allegations in said indictment contained, and about which inquiry was made upon the trial of said Young; and that at the time when said bill of indictment was drawn by the then attorney for the United States, and found by the grand jury, and at all of the times it was considered by said attorney for the United States, all of the facts which would be competent to sustain the allegation of plaintiff"s libel of information were known to and within the possession of the said attorney of the United States.

And these claimants aver and say that the United States ought not to maintain its action herein for the penalty denounced by section 3451, and

other sections of the Revised Statutes of the United States under which the said libel of information was drawn, for the said W. More Young was tried and convicted in this court in manner aforesaid, as to one of the counts of said indictment and acquitted as to other counts, and the full sentence of the law and this court has been executed
39 upon him for the same matters and things herein alleged in plaintiff's said libel of information; and that all and singular of said matters upon said trial were tried and inquired into and fully heard, and on the hearing thereof the jury, duly impaneled and sworn, found said W. More Young guilty as to part and not guilty as to other of said charges.

And claimants further aver that at the time of the alleged commission of the acts for which a forfeiture is sought to be inforced in this action the said W. More Young was one of the owners of all of the property, real and personal, upon which a forfeiture could be decreed by this court, and that he ought not to be required to twice suffer for the same offense; and these claimants further aver in this behalf that it is only as stockholders in said corporation of which said W. More Young is and at all the times hereinabove mentioned was a member and stockholder that these claimants are sought to be charged with any notice of the alleged unlawful acts and doings of said corporation.

These claimants aver the foregoing in addition to their answer already on file herein, and expressly rely not only upon this, but upon all of the allegations and denials contained in said original answer. And having fully answered, they pray as they have heretofore prayed in said original answer.

Dated August 21st, 1890.

BROUSSEAU & HATCH,
HENRY C. MCPIKE,
Attorneys and Solicitors for Claimants.

40 EXHIBIT A.

In the United States district court in and for the southern district of California.

At a stated term of said court, begun and holden at the city of Los Angeles, in the county of Los Angeles, within and for the southern district of California, on the second Monday of August, in the year of our Lord one thousand eight hundred and eighty-eight.

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present:

That W. More Young, late of the southern district of California, heretofore, to wit, on the 5th day of September, in the year of our Lord one thousand eight hundred and eighty-seven, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal-revenue laws and by a regulation made in pursuance thereof, to wit, a certain monthly return required to be made by distillers of grapes, which certain monthly return consisted of a report, signed and executed by said W. More Young, as secretary of the Fruitvale Wine and Fruit Company, a corporation engaged in the business of wine making and distilling, of the dates, the kind of material, the time of operation, and the

amount of brandy distilled during the month of August, 1887, at the Fruitvale Wine and Fruit Company's distillery, near the town of Fresno, in the county of Fresno and State of California, in which monthly return the said W. More Young certified that no brandy had been distilled during said month at the said distillery, when in truth and in fact the said distillery was in operation during said month, distilling brandy,
41 and the said W. More Young well knew that said distillery was in operation during said month, at the time that he falsely and fraudulently certified as aforesaid that no brandy had been distilled during the said month.

And the grand jurors aforesaid, on their oaths aforesaid, do further present—

That W. More Young, late of the southern district of California, heretofore, to wit, on the 5th day of October, in the year of our Lord one thousand eight hundred and eighty-seven, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal-revenue laws and by a regulation made in pursuance thereof, to wit, a certain monthly return required to be made by the distillers of grapes, which certain monthly return consisted of a report signed and executed by said W. More Young as secretary of the Fruitvale Wine and Fruit Company, a corporation engaged in the business of wine making and distilling, of the dates, the kind of material, the time of operation, and the amount of brandy distilled during the month of September, 1887, at the Fruitvale Wine and Fruit Company's distillery, near the town of Fresno, in the county of Fresno and State of California, in which monthly return the said W. More Young certified that the distillery of the said Fruitvale Wine and Fruit Company aforesaid was in operation during only four days of said month, to wit, on the 3rd, on the 5th, on the 10th, and on the 17th of said month, and that said distillery was in operation on each of said days twelve hours, and produced on the 3rd of said month forty-eight proof gallons of brandy, on the 5th of said month forty-seven proof gallons of brandy, on the 10th of said month forty-eight proof gallons of brandy, and on the 17th of said month forty-nine proof gallons of brandy; whereas, in truth and fact, said dis-
42 tillery was in operation on divers and other days during said month other than those reported by said defendant for twenty-four hours of each day, and that said distillery was in operation twenty-four hours of each day reported by said W. More Young in said monthly return instead of twelve, as set forth by him therein, distilling brandy during all of the days during said month and other than those reported in said monthly return; and said W. More Young well knew when he signed and executed the monthly return of said Fruitvale Wine and Fruit Company's distillery for the month of September, 1887, on the 5th day of October, 1887, he signed and executed a document the contents of which he knew to be false.

And the grand jurors aforesaid, on their oath aforesaid, do further present:

That W. More Young, late of the southern district of California, heretofore, to wit, on the 5th day of November, in the year of our Lord one thousand eight hundred and eighty-seven, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal-revenue laws, and by a regulation made in pur-

suance thereof, to wit, a certain monthly return required to be made by distillers of grapes, which certain monthly return consisted of a report signed and executed by said W. More Young, as secretary of the Fruitvale Wine and Fruit Company, a corporation engaged in the business of wine making and distilling, the dates, the kind of material, the time of operation, and the amount of brandy distilled during the month of October, 1887, at the Fruitvale Wine and Fruit Company's distillery near the town of Fresno, County of Fresno and State of California, in which monthly return the said W. More Young certified that the distillery of the said Fruitvale Wine and Fruit Company aforesaid was in operation during only five days of said month, to wit, on the 17th, on the
43 24th, on the 25th, on the 26th, and on the 27th of said month, and that said distillery was in operation on each of said days twelve hours, whereas, in truth and in fact, said distillery was in operation on divers and other days during said month, other than those reported by said defendant, for twenty-four hours to each day, and that said distillery was in operation twenty-four hours of each day reported by said W. More Young in said monthly return in stead of twelve, as set forth by him, therein distilling brandy during all of the days during said month, and other than those reported in said monthly returns; and during said month of October, 1887, the said distillery produced a large quantity of brandy not reported by said W. More Young upon the monthly return heretofore named, required by law, and by the regulations of the internal-revenue department made in pursuance of such laws; and said W. More Young well knew when he signed and executed the monthly return of said Fruitvale Wine and Fruit Company's distillery for the month of October, 1887, on the 5th day of November, 1887, he signed and executed a document, the contents of which he knew to be false.

And the grand jurors aforesaid, on their oath aforesaid, do further present:

That W. More Young, late of the southern district of California, heretofore, to wit, on the 7th day of December, in the year of our Lord one thousand eight hundred and eighty-seven, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal-revenue laws, and by a regulation made in pursuance thereof, to wit, a certain monthly return required to be made by distillers of grapes, which certain monthly return consisted of a report signed and executed by said W. More Young, as secretary of the Fruitvale Wine and Fruit
44 Company, a corporation engaged in the business of wine making and distilling, of the dates, the kind of material, the time of operation, and the amount of brandy distilled during the month of November, 1887, at the Fruitvale Wine and Fruit Company's distillery, near the town of Fresno, in the county of Fresno, State of California, in which monthly return the said W. More Young certified that the distillery of the said Fruitvale Wine and Fruit Company aforesaid was in operation during only twelve days of said month, to wit, on the 2nd, on the 3rd, on the 4th, on the 7th, on the 8th, on the 9th, on the 10th, on the 14th, on the 15th, on the 16th, on the 17th, and on the 18th of said month, and that said distillery was in operation on each of said days twelve hours; whereas, in truth and in fact, said distillery was in operation on divers and other days during said month other than those reported by said defendant, for twenty-four hours to each day, and that said dis-

tillery was in operation twenty-four hours of each day reported by said W. More Young in said monthly return instead of twelve, as set forth by him therein, distilling brandy during all of the days during said month and other than those reported in said monthly returns, and during said month of November, 1887, the said distillery produced a large quantity of brandy not reported by said W. More Young upon the monthly return heretofore named, required by law and by the regulations of the Internal-Revenue Department made in pursuance of such laws, and said W. More Young well knew, when he signed and executed the monthly return of said Fruitvale Wine and Fruit Company's distillery for the month of November, 1887, on the 7th day of December, 1887, he signed and executed a document the contents of which he knew to be false.

And the grand jurors aforesaid, on their oath aforesaid, do further present:

45 That W. More Young, late of the southern district of California, heretofore, to wit, on the 6th day of January, in the year of our Lord one thousand eight hundred and eighty-eight, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal revenue laws and by a regulation made in pursuance thereof, to wit, a certain monthly return required to be made by distillers of grapes, which certain monthly return consisted of a report signed and executed by said W. More Young, as secretary of the Fruitvale Wine and Fruit Company, a corporation engaged in the business of wine making and distilling, of the dates, the kind of material, the time of operation, and the amount of brandy distilled during the month of December, 1887, at the Fruitvale Wine and Fruit Company's distillery, near the town of Fresno, in the county of Fresno, and State of California, in which monthly return the said W. More Young certified that the distillery of the said Fruitvale Wine and Fruit Company, aforesaid, was in operation during only four days of said month, to wit, on the 5th, on the 6th, on the 10th, and on the 21st of said month, and that said distillery was in operation on each of said days twelve hours, whereas in truth and in fact said distillery was in operation on divers and other days during said month, other than those reported by said defendant, for twenty-four hours to each day, and that said distillery was in operation twenty-four hours of each day reported by said W. More Young in said monthly return instead of twelve, as set forth by him therein, distilling brandy during all of the days during said month and other than those reported in said monthly returns; and during said month of December, 1887, the said distillery produced a large quantity of brandy not reported by said

46 W. More Young upon the monthly return heretofore named, required by law and by the regulations of the Internal Revenue Department made in pursuance of such laws; and said W. More Young well knew when he signed and executed the monthly return of said Fruitvale Wine and Fruit Company's distillery for the month of December, 1887, on the 6th day of January, 1888, he signed and executed a document the contents of which he knew to be false.

Against the peace and dignity of the United States and contrary to the form of the statute of said United States in such case made and provided.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) No. 89. United States district court, southern district of California. The United States of America vs. W. More Young. Indictment for falsely and fraudulently signing and executing documents required by Int. Rev. Laws, § 3451, R. S. A true bill. H. S. Parcels, foreman. Presented and filed in open court this 20th day of Dec., A. D. 1888. E. H. Owen, clerk. George J. Denis, United States attorney.

Names of witnesses examined before the said grand jury on finding the foregoing indictment: Jas. Devaney, Olaf Johnson, Oscar A. Johnson, James Warner, C. E. Gardner, J. B. Carter, E. B. Davis.

47 EXHIBIT B.

In the U. S. district court, southern district of California.

THE UNITED STATES *vs.* W. MORE YOUNG. } Verdict.

LOS ANGELES, *Feb'y 20th, 1889.*

In the case of the United States vs. Wm. More Young the jury find the defendant guilty in the first count of August and not guilty in the four other charges against said defendant.

FRED ETON, *Foreman.*

Filed Feb'y 20th, 1889.

(Endorsed:) No. 82. United States dist. court, southern dist. of Cal. The United States vs. One Distillery. Amendment to answer. Filed Aug. 21st, 1890. E. H. Owen, clerk. Brousseau & Hatch & Henry C. McPike, attys. & solicitors for claimants.

48 In the United States district court in and for the southern district of California.

THE UNITED STATES OF AMERICA *vs.* ONE DISTILLERY ET AL. } Demurrer to amendment of answer.

Now comes the United States, by Willoughby Cole, its attorney, and demurs to the amendment of the answer herein, and for cause of demurrer shows:

First. Because it does not state facts sufficient to constitute a defence to this action.

Second. Because it is insufficient in law to constitute a defence to this action.

Dated August 21st, 1890.

WILLOUGHBY COLE, *United States Attorney.*

(Endorsed:) No. 82. U. S. district court, so. dist. of California. The United States vs. One Distillery et al. Demurrer to amendment to answer. Filed Aug. 21st, 1890. E. H. Owen, clerk. W. Cole, U. S. atty.

49 At a stated term, to wit, the August term, A. D., 1890, of the district court of the United States of America, in and for the southern district of California, held at the city of Los Angeles on Monday, October 20th, in the year of our Lord one thousand eight hundred and ninety.

Present, Hon. E. M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* ONE DISTILLERY, ETC. (HENRY WOLTERS ET AL., claimants).	No. 82.

A demurrer having been heretofore filed by Willoughby Cole, esq., U. S. attorney, on the 21st day of August, 1890, to defendants' amended answer to the libel of information, and the same having been submitted on briefs, an opinion thereon by the court is now filed, and it is ordered that the demurrer be overruled.

The United States attorney thereupon excepts to the ruling of the court.

50 In the district court of the United States in and for the southern district of California.

THE UNITED STATES OF AMERICA *vs.* ONE DISTILLERY (HENRY WOLTERS & OTHERS, claimants).	No. 82.

Decree.

This cause came on regularly for trial before the court, sitting without a jury, a jury trial having been expressly waived in writing, the United States being represented by Willoughby Cole, esq., United States attorney, and the claimants by Messrs. Brousseau and Hatch, and Henry C. McPike, esq.

Whereupon the United States attorney announced to the court that the facts set forth in the amended and supplemental answer heretofore filed by the claimants in this action, and to which a demurrer had been interposed by the United States and overruled by the court might be considered by the court and taken as true for the purposes of this trial, as if the said facts had been proved by competent witnesses, but that they were insufficient in law to constitute a defence to this action.

Thereupon the United States, by their said attorney, and the claimants by their attorneys aforesaid, submitted the cause to the court for its decision upon the pleadings in said cause, and the said amended and supplemental answer, the facts as to the matter, as already stated, being taken as true, the court, after considering the same, orders and decrees that the libel herein be, and the same is hereby, dismissed.

ROSS, *District Judge.*

51 (Endorsed:) 82. U. S. district court, southern district of California. United States of America, vs. One Distillery et al. Decree. Filed October 21st, 1890. E. H. Owen, clerk.

52 In the district court of the United States in and for the southern district of California.

THE UNITED STATES OF AMERICA
vs.
ONE DISTILLERY (HENRY WOLTERS & OTHERS, claimants).

Sections 3257, 3281, 3305, 3453, and 3456 of the Revised Stat'es of the United States are as follows:

"Section 3257. Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on spirits distilled by him, or any part thereof, he shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years."

"Section 3281. Every person who carries on the business of a distiller without having given bond as required by law, or who engages in or carries on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, shall, for every such offense, be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years. And all distilled spirits, or wines,
53 and all stills or other apparatus fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits, or wines, and personal property found in the distillery, or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises, and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person who, knowingly, has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or enclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery, which shall be found in any such building, yard, or inclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States."

"Section 3305. Whenever any false entry is made in or any entry required to be made is omitted from, either of the said books mentioned in the two preceding sections, with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto; or any distiller as aforesaid omits or refuses to provide either of said books, or cancels, obliterates, or destroys any part of either of said books, or any entry therein, with intent to defraud, or permits the same to be done, or such books, or either of them, are not produced when required by any
54 revenue officer, the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property on said

premises used in the business there carried on, shall be forfeited to the United States. And every person who makes such false entry, or omits to make any entry hereinbefore required to be made, with the intent aforesaid, or who causes or procures the same to be done, or fraudulently cancels, obliterates, or destroys any part of said books, or any entry therein, or wilfully fails to produce such books, or either of them, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years."

"Section 3453. All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be forfeited to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles or with design to evade the payment of said tax, and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or enclosure where such articles or raw materials are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeiture shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made."

"Section 3456. If any distiller, rectifier, wholesale liquor dealer, or manufacturer of tobacco or cigars, shall knowingly or wilfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this title prohibited, if there be no specific penalty or punishment imposed by any other section of this title for the neglecting, omitting or refusing to do, or for the doing or causing to be done the thing required or prohibited, he shall pay a penalty of one thousand dollars; and if the person so offending be a distiller, rectifier, or wholesale (liquor) dealer, all distilled spirits, or liquors owned by him or in which he has any interest as owner; and if he be a manufacturer of tobacco or cigars, all tobacco or cigars found in his manufactory, shall be forfeited to the United States."

Based on these sections an information was filed by the district attorney on the 13th of November, 1888, and amended on the 11th of January, 1889, for the forfeiture of certain real and personal property therein specifically described and which was seized by the collector of internal revenue for this district, on the first day of November, 1888, consisting of five acres of land, situated about four miles from the city of Fresno, upon which stand the distillery and winery buildings and distillery and winery premises theretofore occupied by the Fruitvale Wine and Fruit Company, a corporation organized and existing pursuant to the laws of the State of California, together with all and singular the buildings standing upon said winery and distillery premises; also, one still, one eleva-

tor, one grape stemmer, one lot of belting, one cauldron, one suc-
56 tion pump, one wine press, one wine tank, two trucks, one wind-
mill and pump, nine wine tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and treadwheel; also, thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons of white wine, two thousand gallons of port wine, one thousand gallons of brandy, four hundred and fifty gallons of alcohol, ten thousand gallons of wash for brandy, and all the tools, implements, and utensils used by said Fruitvale Wine and Fruit Company in the manufacture of distilled spirits.

The amended information alleged as grounds for a decree of forfeiture of the property in question, in substance, as follows:

1. That on the 1st day of June, 1888, the said Fruitvale Wine and Fruit Company had in its possession, custody, and control certain proof brandy and high proof spirits for the purpose of selling and removing the same in fraud of the revenue laws, and with the design of avoiding payment of the taxes due the Government.

2. That the said Fruitvale Wine and Fruit Company, being a distiller of distilled spirits, and engaged in carrying on that business at the aforesaid distillery, did defraud the Government during the months of July, August, September, October, November, and December, 1887, of the tax on a large quantity of spirits distilled by it, by the fraudulent removal of such spirits from the distillery where the same had been dis-
57 tilled to a place other than a distillery, bonded or designated warehouse, or place of depository, without the tax thereon being paid, and without the packages in which the same was contained being stamped or branded, and without the law in relation to distilled spirits being complied with in any manner, and with the intent to defraud the Government of the tax due on said spirits.

3. That the said Fruitvale Wine and Fruit Company, as such distiller, during the months of July, August, September, October, November, and December, 1887, with intent to defraud the Government of the tax due on spirits distilled by it, made through its secretary, W. More Young, false entries in the books required by law to be kept by it, and omitted to do other things and perform other acts in relation thereto, required by law to be performed, and by such means defrauded the Government.

4. That the said Fruitvale Wine and Fruit Company as such distiller did, during the months of July, August, September, October, November, and December, 1887, knowingly and wilfully omit, neglect, and refuse to do or cause to be done any of the acts required by law in carrying on its business of distilling, and did during the same time in carrying on its said business commit acts prohibited by the law.

It is alleged that at all of the times referred to Wolters, Helm, Austin, and Kauffman, who are claimants herein, were holders of stock of the Fruitvale Wine and Fruit Company, and were cognizant of all of the alleged fraudulent acts and omissions on the part of the corporation, and

that they subsequently with full knowledge of such fraudulent acts and omissions purchased all of the said property.

Wolters, Helm, Austin, and Kauffman appeared as claimants
58 and filed an answer to the amended information in which all of the allegations of fraud on their part are denied, and which sets up that they are the owners of all of the property described in the information, or so much of it as actually existed at the time of seizure. That they acquired certain described portions of it by purchase at a public sale made by the assignee of the Fruitvale Wine and Fruit Company on the 9th of June, 1888, for the sum of $7,700, which sum they paid, and thereupon received possession of the property purchased. That thereupon claimants formed a partnership for the purpose of operating the winery on the premises, and added thereto necessary machinery and buildings to the extent of $5,000 in value. That on or about June 20, 1888, and while claimants were in possession of the premises and in good faith making large and expensive additions thereto, the property was seized by the collector of internal revenue for an alleged violation of the revenue laws by the Fruitvale Wine and Fruit Company in the year 1887. That by reason of negotiations with the revenue officials the property was, on or about October 27, 1888, released and claimants restored to its possession, whereupon they proceeded to make further improvements and expenditures and engaged in the business of operating the winery, adding from their personal funds in the purchase of stock, material, and machinery the sum of $25,000; pursued the business and in all respects complied with the laws of the United States and the rules and regulations of the revenue department. That afterwards, to wit, on or about the 2nd day of November, 1888, on account of the alleged wrongful acts of the Fruitvale Wine and Fruit Company occurring in the year 1887, the said premises and property, with all the additions and improvements, stock and material, made and supplied by claimants, were again seized by the revenue officers and the possession thereof withheld from
59 claimants until on or about November 30th, 1888, when claimants were restored to possession by giving a bond in the sum of $35,000. That afterwards, to wit, on the 8th of December, 1888, the said premises and property were again seized by the internal-revenue collector on account of the alleged wrongdoing of the Fruitvale Wine and Fruit Company during its occupancy thereof, and that in order to prevent the sale of said property and to recover its possession, and to prevent further loss and damage by the suspension of their business, the claimants were compelled to and did pay under protest to the collector the sum of $3,392, alleged to be due and owing from the Fruitvale Wine and Fruit Company to the Government by reason of the failure of that corporation to comply with the laws and the rules and regulations of the revenue department during the year 1887. That between the dates of the first seizure, on or about June 20th, 1888, and the second seizure, on or about November 2nd, 1888, claimants added to the premises certain described property, the aggregate value of which was over $25,000, all of which was included in the seizure of November 2nd, and also in that of December 8th, 1888, without fault on their part. They deny that the 1,000 gallons of brandy, or the 450 gallons of alcohol, or the barrels containing the same, found in their possession at the time of the seizure

in November, constituted any part of the property alleged to have been found in the possession of the Fruitvale Wine and Fruit Company on or about June 1st, 1887, or that said brandy or alcohol, or the barrels containing the same, ever were in possession of that company at the distillery or elsewhere. They deny that they, or either of them, ever purchased or received from the Fruitvale Wine and Fruit Company any brandy or alcohol, or other high proof spirits, knowing that the company had
60 defrauded, or sought to defraud, the Government, or had failed to apply or sought to avoid the payment of taxes due thereon, or that the same had for any cause become forfeited to the Government.

The claimants, by their answer, admit that they were owners of stock in the Fruitvale Wine and Fruit Company, but deny that they, or either of them, had any knowledge of the alleged frauds, on the part of that corporation, or its officers, or ever heard of them until after the seizure of the property by the collector.

By an amendment to their answer filed on the 21st of August, 1890, the claimants set up this defence: That after the last seizure and on the 20th of December, 1888, W. Moore Young was indicted by the U. S. grand jury upon five separate counts, charging that he had committed unlawful acts against the revenue laws while secretary of the Fruitvale Wine and Fruit Company, upon which indictment he was tried, and, on the 20th of February, 1889, convicted upon the first count and acquitted as to the other four, the record of his conviction being made part of the amended answer.

The first count of the indictment charged that as secretary of the Wine and Fruit Company it became the duty of Young to sign and execute each month a statement in writing showing the date, kind of material used, time of operation and amount of brandy distilled by the company, of which he was secretary. That during the month of September, 1887, he signed and executed a report for the previous month in which he knowingly made false and fraudulent statements concerning the matters and things required of him by the law.

The second count made a similar charge respecting his statement for the month of September, the third in respect to October, the fourth
61 in respect to November, and the fifth in respect to December, 1887.

The amended answer avers that "at all the times mentioned in the indictment, said Young was a stockholder in the said company, and that at all the times mentioned in the indictment the said company was the owner of all the real and personal property upon which and in connection with which the distillery was situated and operated. That it was by virtue of his position as secretary that he was enabled to sign and execute the documents mentioned in the indictment, and that it was only as such officer that he could have signed the documents. That the whole of the capital and property of the corporation consisted of said distillery and winery premises, with the appurtenances to each, and that the capital stock in said corporation owned by said Secretary Young represented the interest and property which he then had in and owned in said distillery, winery, etc. That the distillery and distillery premises, winery, and real and personal property mentioned in the libel is the same distillery and distillery premises, winery, and real and personal property mentioned and referred to in said indictment against said Young. That

the alleged frauds, concealments, and removals of distilled spirits and the other fraudulent acts set forth in said libel are the same frauds, concealments, and removals and other unlawful acts inquired of and investigated upon the trial of said Young, and in respect to which he was convicted.

That all the evidence which would be necessary to establish the various assignments and charges of fraud set out in the libel were used and introduced upon the trial of said Young. That at the time of the alleged commission of the acts for which a forfeiture is sought to be enforced in this action said Young was one of the owners of all of
62 the property, real and personal, upon which a forfeiture could be decreed by the court."

To this defence the district attorney on behalf of the Government demurred, and the question of its sufficiency—accepting as true the facts alleged—is now for decision.

The indictment against Young was based on section 3451 of the Revised Statutes, which is as follows:

"Every person who simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal-revenue laws, or by any regulation made in pursuance thereof, or who procures the same to be falsely or fraudulently executed, or who advises, aids in, or connives at such execution thereof, shall be imprisoned for a term not less than one year nor more than five years; and the property to which such false or fraudulent instrument relates shall be forfeited."

The case of the United States v. McKee, 4 Dillon, 128, was a civil action brought by the Government to recover the liability denounced by section 3296 of the Revised Statutes of double the amount of taxes of which the United States had been defrauded by the unlawful removal of whiskey from the distilleries of various persons, in which removals it was charged the defendant aided and abetted.

The defendant interposed two defenses:

1. That he had been theretofore indicted, convicted, and punished for the same offences.

2. That for these offences he had been pardoned by the President. To that answer the Government demurred. Mr. Justice Miller, with whom concurred Judge Dillon, in overruling the demurrer held, that if the specific acts of removal on which the civil suit was brought were
63 the same which were proved in the indictment, the former conviction and judgment constituted a bar to the civil suit, on the ground that our laws forbid that anyone shall be twice punished for the same crime or misdemeanor. That case was cited with apparent approval by the Supreme Court in Coffey v. United States, 116 U. S., 445. The circumstance that the civil suit was under one section of the Revised Statutes and the criminal prosecution under another was not considered to affect the question, nor is any reason perceived why it should. The decision was based upon the averments that both proceedings were for the same acts or transactions. If the Government can not be permitted to maintain a civil action for the recovery of money denounced as a penalty for a violation of one of the sections of the statute where the same party had been previously prosecuted and convicted and punished for the

same acts or transactions under another section, it would seem, for the same reasons, to follow necessarily that the Government can not be permitted to maintain a civil action for the forfeiture of the property of a person for the acts or transactions for which it has previously prosecuted, convicted, and punished him. It is true that in the present case, Young, the person heretofore indicted, convicted, and punished under section 3451 of the Revised Statutes, is not a claimant, and that the claimants, Wolters, Helm, Austin, and Kauffman, allege in their original answer that they acquired by purchase at a public sale made by the assignee of the Fruitvale Wine and Fruit Company, on the 9th day of June, 1888, all of the property in question then in existence, and have since owned the same together with that subsequently added. But it must be remembered that the pleadings show that the alleged fraudulent acts of commission and omission upon which the Government's right to a
64 decree of forfeiture is based occurred in the year 1887, and that it is the established doctrine of the Supreme Court that the forfeiture took effect immediately upon the commission of the acts denounced by the statute. (United States v. Stowell, 133 U. S., p. 1.) "The right to the property then vests in the United States," said the court, "although their title is not perfected until judicial condemnation; the forfeiture constitutes a statutory transfer of the right to the United States at the time the offense is committed; and the condemnation, when obtained, relates back to that time, and avoids all intermediate sales and alienations, even to purchasers in good faith." The purchase made by Wolters, Helm, Austin, and Kauffman at the sale made in June, 1888, by the assignee of the Fruitvale Wine and Fruit Company was therefore void as against the Government, even if they could be regarded as purchasers in good faith. But that they can not be so regarded is plain, for the reason, among others, that each of them was an owner of stock in that corporation and therefore interested in the property at the time of the perpetration of the frauds. That sale being void as respects the Government for one purpose is void as to all, and the rights of the Government are to be determined as though it had never occurred.

The right which the Government by this suit asks the court to enforce is the right which vested in it in 1887 to take the property as forfeited by the fraudulent acts on the part of the Fruitvale Wine and Fruit Company. (U. S. v. Stowell, supra.) When that right accrued, Young, as an owner of stock in that corporation, had an interest in every part and parcel of the property of the company. The Government had the right to proceed by civil action to enforce the forfeiture of the property because of the frauds, or to prosecute the parties engaged in it
65 criminally; but for the same acts it could not do both, according to the ruling in the cases to which reference has been made.

It does not seem to me to be material that Young does not here appear as a claimant. If the facts be as alleged—and upon demurrer they are to be taken as true—the Government indicted, convicted, and punished him for certain frauds committed in relation to the property in question, and for the same fraudulent acts and omissions that were introduced in proof in support of that indictment it asks the court in the present suit to decree a forfeiture of the property, the right to which accrued to the Government as has been seen, at the time of the commis-

sion of the frauds, and when Young as a stockholder in the corporation was interested in every part and parcel of the property. To take the property in which he has an interest is to take his property; and, for the same acts and omissions, to punish him criminally and also take his property is, for the same offences, to punish him twice.

The circumstance that Wolters, Helm, Austin, and Kauffman have not been prosecuted for the fraudulent acts and omissions that are made the basis of the present action does not relieve the Government's case of the difficulty. To take the property from one stockholder is to take it from all, and I can see no valid reason why the plea in bar of the action may not be interposed by any one interested in the property. Indeed, according to the Admiralty practice, by which this proceeding is governed, the court protects and holds the property for the benefit of the true owner, whoever he may be. (Conkling's Admiralty Practice, vol. 2, pg. 54th.) Domurrer overruled.

Ross, *District Judge.*

66 (Endorsed:) 82. United States district court, southern dist. of California. United States of America v. One Distillery, etc. Opinion. Filed October 20th, 1890. E. H. Owen, clerk.

67 In the district court of the United States in and for the southern district of California.

UNITED STATES OF AMERICA
vs.
ONE DISTILLERY, ETC. (HENRY WOLTERS ET AL., claimants). } No. 82.

I, E. H. Owen, clerk of the district court of the United States in and for the southern district of California, do hereby certify that the foregoing papers, hereto annexed, constitute the judgment roll and enrolled papers in the above-entitled action.

Attest my hand and the seal of said district court this 21st day of October, 1890.

[SEAL.] E. H. OWEN, *Clerk.*

(Endorsed:) No. 82. U. S. district court, southern district of California. United States of America vs. One Distillery, etc. (Henry Wolters et al., claimants). Enrolled papers. Filed October 21st, 1890. E. H. Owen, clerk.

68 Circuit court of the United States of America, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA
vs.
ONE DISTILLERY ET AL. } In error.

Of January term, in the year of our lord one thousand eight hundred and ninety-one:

Afterwards, to wit, on the second Monday of January, in this same term, before the Honorable Lorenzo Sawyer, judge of said circuit court

of the United States, ninth circuit, southern district of California, comes the plaintiff the United States of America, by Willoughby Cole, United States attorney for the said southern district of California, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the amendment to the answer aforesaid, and the matters therein contained, are not sufficient in law for the said claimants to have or maintain the same as a defense to the aforesaid action against the said One Distillery et al.

There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given decreeing a dismissal of the libel herein, and against the United States, whereas by the law of the land the said judgment ought to have been given for the United States, and ought not to have decreed a dismissal of the libel herein, and the United States prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it
69 may be restored to all things which it has lost by occasion of said judgment.

WILLOUGHBY COLE,
United States Attorney for the Southern District of California.

70 In the district court of the United States of America in and for the southern district of California.

THE UNITED STATES OF AMERICA
vs.
ONE DISTILLERY ET AL. } No. 82.

I, E. H. Owen, clerk of the district court of the United States of America, in and for the southern district of California, do hereby certify the foregoing seventy-six pages, numbered from one to seventy-six, inclusive, and comprised in one volume, to be a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, and that the same constitute the transcript on appeal to the circuit court of the United States, of the ninth judicial circuit, in and for the southern district of California, in said cause.

Attest my hand and the seal of said district court this 2nd day of January, A. D. 1891.

[SEAL.] E. H. OWEN, *Clerk.*

(Endorsed:) No. 197. U. S. circuit court, southern district of California. The United States of America vs. One Distillery et al. Transcript. Filed January 9th, 1891. Wm. M. Van Dyke, clerk.

71 At a stated term, to wit, the January term, A. D. 1891, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court room in the city of Los Angeles, on Monday, the 12th day of January, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA, PLAINTIFFS IN error,
vs.
ONE DISTILLERY ET AL., HENRY WOLTERS ET al., claimants, defendants in error.
} No. 197.

This cause coming on regularly on this day for a hearing, now, pursuant to the stipulation of the parties this day filed herein, and on motion of Willoughby Cole, esq., United States attorney, it is ordered that said cause be submitted on briefs, with thirty (30) days time from this day for said United States to file their brief, with thirty (30) days for One Distillery et al., and said claimants, to reply thereto, and twenty (20) days for said United States to reply to said brief of said One Distillery et al., and said claimants.

72 I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court January 12th, 1891, in the cause entitled The United States of America, plaintiffs in error, vs. One Distillery et al., Henry Wolters et al., claimants, defendants in error, No. 197, and remaining of record therein.

Attest my hand and the seal of said circuit court, this 26th day of February, A. D. 1897.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 197. U. S. circuit court, ninth circuit, southern district of California. The United States of America v. One Distillery, etc., Henry Wolters et al., claimants. Certified copy of order of submission. Filed Feb. 26, 1897. Wm. M. Van Dyke, clerk.

73 In the circuit court of the United States, ninth judicial circuit, southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF IN error,
vs.
ONE DISTILLERY, ETC., HENRY WOLTERS ET AL., claimants, defendants in error.
} No. 197.

In error to the district court of the United States for the southern district of California.

This cause came on to be heard on the transcript of the record from the district court of the United States for the southern district of California, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby, affirmed.

February 23rd, 1897.

JOSEPH MCKENNA,
Circuit Judge.

(Endorsed:) No. 197. U. S. circuit court, ninth circuit, southern district of California. The United States of America, plaintiffs in error, vs. One Distillery, etc., Henry Wolters et al., claimants. Order and judgment. Filed Feb. 26, 1897. Wm. M. Van Dyke, clerk.

74 In the circuit court of the United States, ninth judicial circuit, in and for the southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFFS IN error,
vs.
ONE DISTILLERY ET AL., HENRY WOLTERS ET AL., claimants, defendants in error.
} No. 197.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the ninth judicial circuit, southern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above-entitled action.

Attest my hand and the seal of said circuit court this 26th day of February, A. D. 1897.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 197. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. The United States of America vs. One Distillery, etc., Henry Wolters et al., claimants. Judgment roll. Filed February 26th, 1897. Wm. M. Van Dyke, clerk. Recorded Judgment Register Book No. 1, page 326.

75 In the circuit court of the United States, ninth circuit, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
ONE DISTILLERY, WOLTERS ET AL., DEFENDANTS IN error.

The plaintiff in error respectfully petitions the above-named court for its allowance of writ of error to the Supreme Court of the United States to review the judgment of the circuit court in and for the ninth circuit, southern district of California, given, made, and rendered therein on the 26th day of February, 1897, in favor of the above-named defendants in error and against the above-named plaintiff in error in an action for the forfeiture of certain real and personal property therein specifically described and which was seized by the collector of internal revenue, which said proceedings were instituted in the district court of the United States in and for the southern district of California by plaintiff in error, and to which said proceedings defendants and claimants in error answered, setting up matters in abatement; and your petitioner, plaintiff in error, demurred to said answer of defendants and claimants in error; and on hearing of said demurrer before said district court, the same was overruled, and thereafter, by writ of error, was removed to said circuit court,

which affirmed said judgment of the district court on said 26th day of February, 1897.

Your petitioner further shows that the amount and matter in
76 dispute in said proceedings is and was thirty-five thousand dollars.

Your petitioner will present and file with the clerk of the court below, to wit, said circuit court of the United States, an assignment of errors alleged to have been committed upon the hearing and determination of said appeal, and which said assignment of errors will point out separately each error unsettled and intended to be urged, and upon the finding of such specifications will ask said court to allow the same.

And your petitioner will ever pray.

FRANK P. FLINT,
United States Attorney, Southern District of California,
Attorney for Plaintiff in Error.

(Endorsed:) No. 197. U. S. circuit court, ninth circuit, southern district of California. United States vs. One Distillery, Wolters, et al. Petition for writ of error. Filed Aug. 12, 1897. Wm. M. Van Dyke, clerk.

77 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF in error.
vs.
ONE DISTILLERY, WOLTERS, ET AL., CLAIMANTS, defendants in error.
} In error.

Assignment of errors.

The plaintiff in error herein assigns the following as errors committed by the court below in the determination of this cause and the rendition of the judgment therein:

I.

The court erred in affirming the judgment of the district court in entering judgment for defendants and claimants upon the overruling of the demurrer of plaintiff to amended answer of defendants and claimants.

II.

The court erred in affirming the judgment of the district court that the amendment to the answer of defendants and claimants and matters contained therein are sufficient in law for said defendants and claimants to have or maintain the same as a defense to said action.

III.

The court erred in affirming the decree dismissing the libel herein and entering judgment against the United States, as appears from said judgment, for the reason that by the law of the land said judgment ought to have been given to the United States and said decree dismissing said libel ought not to have been affirmed.

78 IV.

That the judgment of the circuit court should have been reversing the decision of the district court, with instructions to sustain the demurrer interposed by plaintiff to the amended answer of defendants.

Wherefore your petitioner prays that said judgment be reversed, and that this honorable court make such further order as it deems proper.

FRANK P. FLINT,
United States Attorney for Southern District of California,
Attorney for Plaintiff in Error.

(Endorsed:) No. 197. U. S. circuit court, ninth circuit, southern district of California. United States vs. One Distillery, Wolters, et al., claimants. Assignment of errors. Filed Aug. 12, 1897. Wm. M. Van Dyke, clerk.

79 At a stated term, to wit, the August term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California, held at the court room in the city of Los Angeles, on Thursday, the twelfth day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

THE UNITED STATES OF AMERICA, PLAINTIFFS in error,
vs.
ONE DISTILLERY ET ALIA, AND HENRY WOLTERS, WILLIAM HELM, R. H. AUSTIN, and J. H. COFFMAN, claimants of said One Distillery et alia, defendants in error. } No. 197.

On reading and filing the petition of the above plaintiffs in error, the United States of America, praying for the allowance of a writ of error in said cause, returnable before the Supreme Court of the United States, and on motion of Frank P. Flint, esq., United States attorney for the southern district of California and attorney for said plaintiffs in error, it is ordered that said petition be, and the same hereby is, allowed and granted, and that a writ of error be, and the same hereby is, allowed in said cause, returnable before the Supreme Court of the United States on the 11th day of September, 1897, and that a transcript of the

80 record and of all of the proceedings and papers upon which the judgment herein was rendered, duly authenticated, be transmitted to the Supreme Court of the United States.

81 In the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFFS in error,
vs.
ONE DISTILLERY ET ALIA, AND HENRY WOLTERS, WILLIAM HELM, R. H. AUSTIN, and J. H. COFFMAN, claimants of said One Distillery et alia, defendants in error. } No. 197.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing eighty pages, numbered from 1 to 80, inclusive, and contained in one volume, to be a full, true, and correct copy of the record, pleadings, papers, assignments of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California, this 30th
82 day of August, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-second.

[SEAL.] WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

(Indorsement on cover:) Case No. 16712. S. California C. C. U. S. Term No. 190. The United States, plaintiff in error, vs. One Distillery et alia, & Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants of said One Distillery et alia. Filed October 30th, 1897. Office Supreme Court of U. S. Received Oct. 30, 1897.